IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5919 OF 2007

M/s Ram Remedies Pvt. Ltd. .... Petitioners

Vs.

Union of India & Ors. .... Respondents

Mr. Madhur R. Baya for the Petitioners
Mr. A.S. Rao for the Respondents.

CORAM : F.I. REBELLO, &
J.P. DEVADHAR, JJ.

DATE : 14TH AUGUST, 2007

P.C.

1) Rule. Heard learned counsel for the parties.

2) The Petitioners had preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal. It is the case of the petitioners that thereafter by a letter dated 7th October 2004 addressed to the Registry of the Tribunal, they had informed the change in the address for communication. It appears that the notice was issued at the address of one of the Directors who had ceased to be a Director. An order came to be passed directing the petitioners

herein to make pre-deposit of Rs. 2 Crores and Director, S.M. Kankaria to make the pre-deposit of Rs.1 Lac within the time stipulated therein.

3) There was non-compliance to the order. Thereafter the appeal was disposed on 7/3/2003 for want of non-compliance of Section 35(F) of the Central Excise Act, 1944. It is the case of the petitioners that they were not aware of the order until they were informed of the dismissal of the Appeal by the erstwhile Director.

4) Thereafter they applied for recalling the order of pre-deposit and the order of dismissal. That came to be dismissed by the impugned order dated 26/03/2007. The learned Tribunal came to conclusion that no ground had been made out for modification and as there was no compliance with the pre-deposit order, application was dismissed. One of the aspects considered by the learned Tribunal was that the Director was duly represented by its counsel.

5) At the hearing of this petition on behalf of the petitioner, their learned counsel submits that Shri. S.M. Kankaria had ceased to be a Directors sometime in the year 1993. Therefore, by

the mere fact that he was represented by counsel, it cannot be said that the company had notice, as admittedly there is no record to indicate that the company which was one of the appellant were served. It is, therefore, submitted that it would be fair, just and proper that the impugned order be set aside and petitioner be given an opportunity to contest the order of pre-deposit of the amount as also hearing on merits. It is then pointed out that the notice has been served intimating that auction of the property for recovery of dues is to be held on 14th August 2007 at 11 hours.

6) Considering the above facts, the present petition is disposed of by issuing the following directions :

(i) The Petitioners in respect of the property will not create any third party rights until disposal of their application by the learned Tribunal.

(ii) The order dated 26/3/2007 is set aside and application No. E/RO/1270 is allowed to the extent that the impugned order of 26/3/2007 is set aside and the Tribunal is directed to re-hear the

application.

(iii) The order dated 17/3/2005 dismissing the petitioners appeal is also set aside as also the order dated 28th January 2005 dismissing the application for waiver of pre- deposit. The Tribunal directed to hear the application No. E/S/709 of 2003 on merits and thereafter to dispose of the appeal in accordance with law.

(iv) The petitioners to appear before the Tribunal on 24th August 2007 at 11 am. Thereafter the learned Tribunal to hear the application for pre-deposit within one month thereafter and pass order according to law.

7) Rule is made absolute accordingly with no order as to costs.

(J.P. DEVADHAR, J.) **(F.I. REBELLO, J.)**